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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

AL FRIEDMAN,
Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit.

VICTOR B. HARRIS,
411 North Seventh Street,
St. Louis 1, Missouri,

SEYMOUR KRIEGER,
777 Fourteenth Street, N. W.,
Washington 5, D. C.,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on February 20, 1958.

OPINIONS BELOW.

The opinion of the District Court (R. 240-251) printed in Appendix A, infra, p. 33, is reported in 147 F. Supp. 1. The opinion of the Court of Appeals (R. 259) is unreported and is printed in Appendix A, infra, p. 23.

JURISDICTION.

The judgment of the Court of Appeals for the District of Columbia Circuit was entered February 20, 1958, infra, p. 268. Rehearing was denied on April 15, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254 (1).

QUESTIONS PRESENTED.

The Court of Appeals held that the appellate procedure within respondent Union (International Association of Machinists) authorized the expulsion of petitioner for **dual unionism**—even though the only charges against petitioner were for **Communist activity**—after petitioner had been twice acquitted of the Communist charges by his peers, first by the Trial Committee which alone heard the testimony, and then by petitioner's local Lodge. The question of dual unionism had never been mentioned at the trial or in the testimony. The expulsion will cause petitioner, a highly skilled machinist, to lose his present employment and deprive him of the right to work at his trade anywhere in the United States. The questions presented are:

1. May an appeal be taken by the accuser from a not guilty verdict where the Union Constitution does not expressly authorize such an appeal, and reserves to the membership all power not specifically delegated to the officers?

2. May the President of the Union reverse the not guilty verdict on the basis of "an independent analysis" of a transcript of oral testimony which he did not hear, accept such testimony as true, after the Trial Committee which alone heard it found that there was a "lack of sufficient and positive evidence," and expel petitioner?

3. May the President in making his independent analysis of the written transcript consider an ex parte brief from petitioner's accuser who had taken the appeal?

4. Section 2 of Art. XXV of the Union Constitution makes dual unionism and Communism separate and distinct punishable offenses. Section 3 of that Article contains no reference to Communism and makes dual unionism the only offense for which the President or the Executive Committee may expel a member. The sole charge against petitioner was for Communist activity in violation of Section 2. No charge of dual unionism was made. In this situation, may the President on the basis of his independent analysis of the testimony, raise the issue of dualism for the first time, find petitioner guilty of participation in a "dual organization" under Section 3, and use the special authority conferred on him in Section 3—there being no such special authority in Section 2—to expel petitioner?

5. May the Executive Council of the Union affirm the President's decision at a meeting presided over by the President, to which petitioner was denied admittance, although permitted to file a written brief?

6. May the Grand Lodge Convention of respondent Union, which was completely controlled by respondents, limit petitioner's appearance at the Convention to an Appeals and Grievance Committee appointed by the President, which Committee after hearing petitioner, ordered him from the hearing room, and then heard at least one of the principal witnesses who had testified against petitioner before the Trial Committee?

7. In affirming petitioner's expulsion, may the Convention go back to the original charges against petitioner of Communism under Section 2 of Art. XXV and find petitioner guilty of such charges, and ignore the expulsion for dualism under Section 3 of Art. XXV as ordered by the President and the Executive Council?

8. May petitioner be expelled where Article K of the Union Constitution under which petitioner was tried pro-

vides that expulsion shall be only by a two-thirds vote of the local Lodge, and no such vote was taken, the local Lodge having acquitted petitioner?

STATUTES INVOLVED.

There are no Federal or State statutes or regulations involved in the issues in this appeal.

STATEMENT.

This action was brought by petitioner in the District Court of the District of Columbia as a local court, pursuant to Title II, Sec. 306 of the District of Columbia Code (1951 Ed.). The controversy arose when written charges were filed against petitioner in Lodge 688, of respondent union, St. Louis, Missouri, by Lloyd Weber, head of the Union in the St. Louis area, accusing appellee of violating Article XXV, Section 2, of the Union Constitution (R. 17-18) by "defending, encouraging and supporting Communism and also with being a member of the Communist Party" (R. 34, 90, 66).[1]

The disciplinary procedure provided in the Union constitution is set out in Article XXV (R. 17-20) and Article K (R. 22-27). So far as pertinent here, the procedure is as follows:

1. Charges are brought in the local Lodge (Article XXV, Section 4) with the trial under the provisions of Article

[1] Sec. 2, Art. XXV, is as follows:

Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the Grand Lodge, or the Constitution for Local Lodges, or any member who advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or who, by other actions gives support to these "philosophies" or "isms," shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion or both.

K (R. 22). The only exception is if the local Lodge fails to proceed on such charges, trial is before the Executive Council (Article XXV, Section 5). The exception did not occur in the instant case.

2. A Trial Committee is appointed in the local Lodge by the President thereof, and this Committee hears the evidence (Article K, Section 2).

3. The Trial Committee reports its finding and recommendations at the next meeting of the local Lodge (Article K, Section 6).

4. The recommendations are then voted on by the local Lodge, which is empowered to amend or reject the Trial Committee's Verdict, except that a two-thirds (⅔) vote is required for expulsion (R. 26).

5. "Appeals may be taken from the decision of any local lodge * * * to the International President." * * * and thereafter "may be prosecuted in accordance with the provisions of Section 6, Article XXV" (R. 26).

6. Section 6 provides for an appeal from a decision of the International President to the Executive Council, and then to a convention of the Grand Lodge or to the membership by referendum. "All appeals shall be laid before the body to whom addressed through the General Secretary-Treasurer" (R. 20).

7. The Constitution is silent as to the powers and authority in such appeals of the International President, the Executive Council or the Grand Lodge Convention, except that Section 3 of Article XXV gives the International President and the Executive Council the authority to expel any member "guilty of joining, or participating in any dual organization" (R. 18).

8. Article XXVIII provides: "All authority and power not specifically delegated to the officers in this Constitution is reserved to the membership" (R. 20).

After both parties had presented their evidence, the Trial Committee reported to the local Lodge in writing, as required by the constitution, that they found petitioner "not guilty as charged due to lack of sufficient and positive evidence" (R. 240-241). Thereafter, again in accordance with the constitution, the report of the Trial Committee was submitted to the local Lodge, which by a vote of 95 to 26 also found appellee not guilty (R. 241).

Without notice to appellee, Lloyd Weber filed an appeal from the not guilty decision of the local Lodge to respondent International President A. J. Hayes, in Washington, D. C. (R. 238). The appeal discussed at length the evidence presented to the Trial Committee, including Mr. Weber's own testimony, and argued the case against appellee (R. 166).

Respondent Hayes found appellee guilty of violating Article XXV, Section 3 in that appellee had "supported a movement dual in purpose to the International Association of Machinists and in violation of the Grand Lodge constitution," and expelled appellee from membership (R. 187-188). Sec. 2, set out footnote[1], p. 4, supra, makes support of "any dual labor movement" an offense, but the charges against petitioner made no reference to dualism. Until the President's order was entered expelling petitioner for dualism, that term had not been used in the proceedings, not even in Weber's appeal letter. Section 3 of Article XXV gives the International President and the Executive Council authority to expel a member for dualism (R. 18); but no authority to expel for any other reason.[2] While Section 2 gives no authority to the International President to expel for any reason.

Weber's written argument to President Hayes and the latter's decision are similar in many respects. Weber

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[2] Sec. 3. The International President and Executive Council shall have authority to expel any member guilty of joining, or participating in any dual organization (R. 17-18).

stated that his "appeal is based on the fact that **the Trial Committee and the Lodge utterly ignored all the testimony and evidence which was presented against Bro. Friedman** (R. 167, the emphasis is Weber's); referred to the testimony of Thomas Younglove, Fred Speckman and Bro. Davis as providing appellee's Communist activity (R. 167-168); contended that there was no showing that appellee "had ever denied being a Communist or that he had ever denounced Communism" (R. 169); and stated in "conclusion that the Trial Committee failed to call any of this evidence and testimony to the attention of the local Lodge" (R. 169).

Hayes accepted as true the oral testimony of Younglove, Speckman and Davis (R. 176-183). He ruled that "Under any system of law a Trial Committee or court does not have the option of ignoring evidence" (R. 184); that it was "significant that he [Petitioner] produced no substantial evidence of his innocence of the charge" (R. 184); and that "the Trial Committee did not make a factual and adequate report to the Lodge as required by Article K, Section 6 of the Grand Lodge Constitution" * * * which "had the effect of minimizing the true facts and influencing the Lodge in a manner which would lead to the conclusion that no substantial evidence was submitted in support of the charges" (R. 185).

Mr. Hayes did not hear a single witness nor inform petitioner that Weber's appeal was in the form of a lengthy letter which argued the merits of his side of the case (R. 238, 166).

Petitioner advised the Executive Council of respondent Union that he wished to appeal and to appear before the Executive Council in person, having already been advised by respondent Secretary-Treasurer Peterson that his request to appear personally before the Executive Council should be addressed to the Council (R. 196, 197, 201). Peterson advised petitioner "that your right of appeal is

permissive in character" (R. 202), and that his request to appear before the Executive Council had been denied (R. 204).

Petitioner submitted his appeal in writing to the Executive Council (R. 211). The Union constitution provides that the International President is the Chairman of the Executive Council (Articles IV and V, R. 14, 15). There is nothing in the record to show that respondent Hayes disqualified himself in this instance. On July 22, 1952, respondent Peterson advised appellee that his appeal had been placed before the Executive Council "in due course" together with the International President's written decision of May 5, 1952, that the Council voted "to sustain the decision of the International President", and that petitioner's expulsion became "effective as of this date—July 22, 1952" (R. 221).

Petitioner thereupon brought suit in the District Court against respondents asking that the Court reinstate him in the Union. This action was dismissed by Judge McLaughlin on the ground that petitioner had not exhausted his remedies within the organization by asking the Grand Lodge Convention for relief (Civil Action No. 3367-52, District of Columbia).

Petitioner thereupon appealed to the Grand Lodge Convention. His appeal to that body was limited to an appearance before an Appeals and Grievance Committee appointed by respondent Hayes (R. 14). The procedure at the Convention was completely controlled by respondents (Amended Complaint, Paragraphs 12, 27, R. 36-37, 41). Petitioner was allowed merely to make a statement; was then ordered from the room, and the Committee heard one of the witnesses who had testified against petitioner before the Trial Committee, and whose testimony was relied on heavily by respondent Hayes in expelling appellee (R. 181-183; Eves' Affidavit, R. 239, 231).

The Appeals and Grievance Committee, without making any reference to Section 3 which the President found petitioner had violated, reported that "there is ample and sufficient evidence on the record as a whole to support the finding of a violation of Article XXV, Section 2, and warrant the verdict of Guilty and penalty of expulsion" (R. 232). The Committee report was adopted by the Convention (R. 232). Thereupon petitioner filed this action in the District Court (R. 6).

Petitioner belongs to a highly skilled trade almost completely organized and controlled by respondent Union. Expulsion would result in loss of petitioner's present valuable job and prevent him from obtaining employment in his trade (R. 37, 54-55).

The District Court (Hon. Luther W. Youngdahl, Judge) granted petitioner a preliminary injunction against expulsion (R. 27). The injunction was set aside by Judge Curran and the cause was dismissed for lack of jurisdiction (R. 67). The Court of Appeals reversed and remanded, 95 App. D. C. 128, 220 F. (2) 808. Judge Curran then reinstated the preliminary injunction (R. 71).

On cross motions for summary judgment, the District Court (Hon. James W. Morris, Judge) made the preliminary injunction permanent.

The Court found that appeals from "not guilty" verdicts by members of voluntary associations have generally been upheld "when the constitution of the association explicitly provides therefor" (R. 241); that the words used in Section 9, Article K of the Union constitution[3] were "inclusive rather than exclusive"; that it could not "be assumed that the Union intended to leave the discipline of its members entirely in the hands of the local Lodge"

[3] "Appeals may be taken from the decision of any local lodge * * * to the International President."

(R. 242); and that "where an appeal is taken from a determination that the accused is not guilty, before a judgment may be reached that he is guilty, it is manifestly clear that full opportunity must be given at every stage in such appellate procedure for the accused to be heard and to reply to matters, both of law and fact, urged against him" (R. 242).

The Court further found that the practice employed in the instant case "is unlike the conventional appellate proceedings where the determination of the appellate tribunal normally affirms the judgment or reverses for error" (R. 242-243). The Court said "there was evidence at the trial which could be the basis for a determination, after proper appellate procedure, that the plaintiff actively engaged in Communist activities" (R. 243). The Court noted that the complaint charged that the procedure at the Grand Lodge Convention "was controlled completely by defendants," and said that this allegation "gives rise to much concern" (R. 244). The Court also noted the lengthy letter of the complainant Weber to the International President and found that there was no question that petitioner had actual knowledge of the appeal; but that "it is equally clear that he was not given an opportunity to hear and be heard with respect to the matters which induced the International President to reverse the action of the Lodge finding him not guilty" (R. 246). The Court also noted that petitioner's request to be heard by the Executive Council had been denied, and that while petitioner had filed a somewhat lengthy brief before the Executive Council, that, "Here again it being evident that the hearing before the Executive Council was in effect a continuation of the trial itself, it required that the plaintiff be given an opportunity to hear and to be heard on the matters being considered" (R. 246-247).

The District Court concluded that petitioner "has not been accorded the procedures on appellate review which

are the minimal requirements of fairness necessary to the reversal without further trial of a determination of not guilty, particularly where, as here, the livelihood of the accused is so directly involved with his right to membership in the union" (R. 248). The Court continued the preliminary injunction and granted further injunctive relief, unless and until appellee "has been accorded the benefit of appellate procedures within the Association in which, at each stage thereof, he [appellee] is given full opportunity to hear and be heard both as to law and the facts upon which it is sought to make a finding of guilty" (R. 250).

The Court of Appeals reversed and directed that respondents' motion for summary judgment be sustained (R. 268, infra p. 32). The Court found no basis for holding that the evidence against petitioner was insufficient. The Court said it could not be assumed that the Association intended to leave discipline of its members entirely in the hands of the local lodge; and that a court should not upset the Union's management of its affairs unless its decision was "inconsistent with fundamental fairness." The Court found that the failure to provide petitioner with a copy of the lengthy appeal letter was not such a procedural defect as to invalidate the proceeding; that the International President could find that a charge of Communism under Section 2 of Article XXV of the Union Constitution constituted "dual organization" under Section 3 of Article XXV, which gave the President independent authority to expel; and that the President's independent analysis of the transcript authorized him to make his own decision on the merits, and use his own expulsion authority to expel petitioner. The Court said:

> "Thus, the President found appellee guilty of the charges, ruled that this constituted participation in a dual organization, and exercised the authority he possessed in such circumstances under Section 3. We

find no reason for a judicial repudiation of this procedure. It seems a fair and permissible means available to the Association for reaching the conclusion that appellee had encouraged and supported Communism, was a member of the Party, and, accordingly, could be expelled for dualism."

The Court further found that although Art. XXV, Sec. 2 (the provision petitioner was charged with violating) was not adopted until April 1, 1949, previous resolutions of the Executive Council making Communism and dual unionism expellable offenses, authorized the expulsion against petitioner for actions prior to April 1, 1949.

A petition for rehearing was overruled and petitioner seeks review in this Court of the above decision of the Court of Appeals.

REASONS FOR GRANTING WRIT.

1. The precedent established by the Court of Appeals involves the "reputation of men and their right to work", and affects all of America's fifteen million union members.[4] The Court approved a procedure by which petitioner was expelled from his Union and which petitioner contends violated elementary rules of fair play. Petitioner was acquitted by the Trial Committee, which alone heard the witnesses, and by his local Lodge. The appellate procedures, which petitioner contends were in violation of his rights included: 1) permitting an appeal from a not guilty verdict; 2) considering on appeal an ex parte brief from petitioner's accuser; 3) permitting respondents to pass upon the credibility of testimony they did not hear, and accept as true evidence that the Trial Committee, which alone heard it,

[4] Mr. Justice Douglas concurring in *Peters v. Hobby*, 349 U. S. 331, 75 S. Ct. 790, 800 (1955): "We deal here with the reputation of men and their right to work—things more precious than property itself."

found insufficient; 4) finding petitioner guilty of a different offense from that with which he was charged; 5) hearing evidence against petitioner ex parte; and 6) expelling petitioner without obtaining the two-thirds vote required of the local Lodge for an expulsion.

This Court has held that a decision of the Court of Appeals of the District of Columbia construing a statute which "is national in scope" and would constitute a "precedent of general application" presents an "important question" which may be reviewed on certiorari, *Del-Vecchio v. Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 193 (1935). See also *Unemployment Compensation v. Aragon*, 329 U. S. 143, 67 S. Ct. 245 (1946), in which certiorari was granted where an Alaska statute similar to those in other states and territories was involved. As in those cases the precedent established here is not limited in its application to the District of Columbia. It affects all the members of respondent Union, approximately one million and mostly nonresidents of the District of Columbia, as well as the members of every other union.

Today trade unions, such as respondent, are vital units of our industrial life. The public interest is involved where a skilled workman, such as petitioner, may be deprived of his livelihood by internal union procedure (R. 37, 53-56). Unions have been the subject of much national legislation, designed both to protect trade unions as such, and to protect the public from excesses of union power. Labor Management Relations Act, 61 Stat. 140, as amended, 65 Stat. 601, 29 U. S. C. A. 158. This Court has held that trade unions are sharply differentiated "from nonprofit organizations generally." *Office Employees International Union v. N. L. R. B.*, 353 U. S. 313, 319, 77 S. Ct. 799, 803 (1957). So important have trade unions become in our national economy that Congress has pre-empted the field in labor relations affecting interstate commerce. *Garner*

v. Teamsters, 346 U. S. 485, 74 S. Ct. 161; *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U. S. 62, 76 S. Ct. 559 (1956). Prof. Walter Gellhorn, one of organized labor's outstanding friends, points out that:

> "Unions have become the economic government of vast numbers of American men and women. Many of the conditions of their lives—their wages, their job tenure, their hope for the future—are controlled by the decisions of those who speak for them through their labor organization." (40 L. R. R. 10, 1957).

See also 49 Mich. L. Rev. 805, "Union Powers and Workers Rights," by Prof. Clyde Summers:

> "The power of the union is not confined to bargaining for his [the member's] working hours, but may extend to his fireside and even to his grave" (l. c. 808).

The instant case is itself a good example of the national character of trade unions, and how the precedent established by the Court of Appeals reaches far beyond the boundaries of the District of Columbia. Although petitioner lives and works in St. Louis, Missouri, his forum to protect his rights was the District of Columbia, because that is the only place he could obtain service on respondents. Many other trade unions have their headquarters in the District of Columbia. In many instances that is the forum where disciplined or expelled union members from all over the nation must go for their day in court. Where possible, actions may also be brought in the state courts, which may and have reached contrary results. Perhaps these courts will conclude, for example, that a procedure which allows the credibility of testimony to be determined on appeal is contrary to elementary standards of justice. Certainly, the Court of Appeals has passed upon a question of great importance, the effect of which is nationwide and is not limited to the District of Columbia.

2. The precedent established here fails to recognize that trade unions are important parts of our national economy. The Court held that "the Association's management of its affairs" should not be upset "unless its decision is inconsistent with fundamental fairness" (Appendix, infra, page 27). The cases cited in support of this position, set out in footnote,[5] show that the Court was clinging to the old view of noninterference in trade union internal matters, developed when unions were considered little more than fraternal societies. The trend of modern decisions is to the contrary and recognizes that the consequences of a loss of union membership are often disastrous to the individual involved.

In the **American Bar Journal**, September, 1957, Vol. 43, No. 9, pages 805, 806, 807, the more recent cases are collected. The author, Matthew O. Tobringer, has well stated the position which trade unions occupy today:

> "The American labor union has undergone a revolution in the past thirty years. Its characteristics have, indeed, changed so radically that it has become a sociological creature quite distinct from what it formerly was; it has grown into an institution, a new kind of public utility of labor relations. * * *
>
> "'A union occupies a **quasi-public** position similar to that of a **public service business** and it has corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal associations.' (Emphasis ours.) In this lan-

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[5] Green v. Obergfell, 73 App. D. C. 208, 307, 121 F. 2d 46, 55; Davis v. International Alliance, 60 Cal. App. 2d 713, 141 P. 2d 486; Becker v. Calnan, 313 Mass. 625, 48 N. E. 2d 668; Rubens v. Weber, 237 App. Div. 15, 260 N. Y. S. 701, 705 (1st Dep't); Margolis v. Burke, 53 N. Y. S. 2d 157, 161 (Sup. Ct.); Simpson v. Grand Int'l, 83 W. Va. 355, 98 S. E. 580, 587. These cases are all comparatively old. The Green case was decided in 1941, Davis in 1943, Becker in 1943, Rubens in 1932, Margolis in 1945, and Simpson in 1919.

guage the California Supreme Court condemned a union which coupled its closed shop contract with its insistence that Negroes join a second-class union. * * *

"The union's government, previously assumed to be supreme and autonomous, presented to the courts an administration which they were willing to weigh and oftentimes to censure. Typical of such cases was the judicial denial of the power of an international president of a laundry workers union to expel a woman worker who became involved in a fight with a fellow member because, according to the court, the constitution did not explicitly describe such an offense as punishable in this manner. In this fashion the courts passed on the kind of rules the union could make, the procedure it should follow in making them, the procedure permissible in disciplining members, and the measure of the punishment. Finally, the courts were, and are, properly intransigent in their demand that no member be suspended or expelled without notification of the charges of the alleged offense, an opportunity to be heard in self-defense, to cross-examine accusers and to refute evidence."

It is significant that none of the cases cited by Mr. Tobriner are referred to by the Court of Appeals here.

Due process is just as important to "the economic government" of working men and women as it is to their political government. As Professor Clyde Summers stated in 64 Harvard Law Review 1049, 1074 (1951):

"If unions are recognized as a form of industrial government, then the rights of a member within the union should be equivalent to the rights of a citizen within a democratic system * * *."

In an article by Professor Witmar entitled "Civil Liberties and the Trade Union," appearing in 50 Yale Law Journal 621 (1941), it is stated:

> "* * * it would be going too far to say that the Bill of Rights is exclusively a state concern, that it has no part to play in determining the legality or illegality of conduct on the part of individuals and associations. * * * We can hardly avoid giving consideration to the standards set up by the Bill of Rights."

See also Professor Sumner Slichter in "Challenge of Industrial Relations", page 100 (1947):

> "Democracy is needed in trade unions because there is room for great differences among members in the objectives of unions, in their policies, and in the ways in which they conduct their affairs."

Deeply ingrained in Anglo-American procedure is the principle that a verdict of guilty is appealable, while a verdict of acquittal is not. Overlooked by the Court of Appeals is *Peters v. Hobby*, 349 U. S. 331, 344-345, 75 Sup. Ct. 790, 797 (1955), which reversed a conviction obtained by an appellate process after an acquittal by the trial tribunal, even though the point was not raised by the accused. This Court said: "While loyalty proceedings may not involve the imposition of criminal sanctions, the limitation on the Board's review power to adverse determinations was in keeping with the deeply rooted principle of criminal law that a verdict of guilty is appealable while a verdict of acquittal is not. This safeguard was one of the few, and perhaps one of the most important, afforded an accused employee under the Order. The effect was to leave the initial determination of his loyalty to his co-workers in the department—to his peers, as it were—who knew most about his character and his actions and his duties."

The precedent established here upholds an appeal of a not guilty verdict. This closes the door to any real democracy in trade unions, and should be reviewed by this Court.

3. The Court of Appeals decision is contrary to a final decision of the California courts construing the identical Union Constitution involved here. In *Gonzales v. Ass'n of Machinists*, 142 Cal. App. (2) 207, 298 P. (2) 92 (1956), the court held that the International President, a respondent here, had no authority to change a penalty prescribed by the local Lodge; that a member tried under Article K of the Union constitution (as was petitioner, R. 34-35) could not be expelled except by a two-thirds vote of the local, and since the required two-thirds vote had not been reached, no penalty could be imposed; that all the International President could do was affirm or reject the action of the Lodge; that the determination of the new penalty is for the Lodge and not for him; and that the requirements of a fair trial must be observed, even though the rules of the union fail to provide therefor. This is flatly contrary to the instant case, which permits the International President to change the verdict to one of guilty and expel the petitioner without the two-thirds vote of the local.[6]

Thus, while petitioner lives and works in Missouri, final authority to pass upon the legality of his right to work rests in the Court of Appeals in the District of Columbia, sitting as a local court. Respondent Union has members in every state, with petitioner's trade "almost completely organized and controlled" (R. 37). Clearly, we submit, this case presents a problem of great national importance.

4. The instant case involves the imposition of District of Columbia local law upon a Missouri resident for alleged misconduct which took place in Missouri. In so doing the Court of Appeals accepted at least one principle of appel-

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[6] Certiorari granted in *Gonzales*, 352 U. S. 966, No. 31 of Oct. Term, 1957, now under submission to this Court on a point not involved here. The Union did not request review of the California Court's holding that the President could not change the penalty, if any, of the local lodge, nor expel the accused, etc.

late procedure—credibility of witnesses—contrary to Missouri law. Petitioner was charged in a formal hearing brought in his local Lodge in Missouri; and as already stated, the Trial Committee found "the defendant" not guilty "due to lack of sufficient and positive evidence" (R. 34-35). The local Lodge agreed with the Trial Committee; and plaintiff Weber, petitioner's accuser, then took an appeal to the International President in Washington, D. C. (R. 35, 166, 170). The President, on the basis of "the evidence found in the record," and without hearing a single witness, reversed the Trial Committee and the local Lodge and expelled petitioner (R. 185, 178). The President relied principally on the evidence of one Younglove, a professional informer, whose testimony the President found to be "forthright." How could he know that? He neither saw nor heard the witness.[7] The Court of Appeals found nothing unfair in such "independent analysis of the transcript" by the President.

In Missouri, however, permitting a reviewing tribunal to accept as true and "forthright" evidence not heard, and which the triers of the facts found insufficient, would be looked upon with disfavor, if not downright horror. A

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[7] The President seemed to be impressed with the fact that Younglove was, as he termed him, "an undercover man for the Federal Bureau of Investigation" (R. 178). Recent experiences have shown that the credibility of such informers may leave a great deal to be desired, *United States v. Subversive Activities Control Board*, 351 U. S. 115, 76 S. Ct. 663, 100 L. Ed. 1003; and *United States v. Flynn*, D. C., 130 F. Supp. 412. *In the instant case, anyone familiar with St. Louis would know that Younglove was decidedly an unreliable witness.* He testified, among other things, that petitioner was a member of the St. Louis Veterans' Committee; had organized "The Veterans of World War II" on a march to Jefferson City, demanding a bonus; that the St. Louis Veterans Committee had at one time "pitched a camp, a tent, on the grounds of the City Hall"; and that the march on Jefferson City really did take place in 1946 or 1947 (R. 137, 138). *This testimony is pure fantasy and anyone who lived in St. Louis would know that.* This testimony points up the merit of the rule, discussed herein, leaving credibility to the trial tribunal.

noted Missouri judge, Henry Lamm, well stated the reason for the rule placing the credibility of oral testimony in the hands of those who hear it in *Creamer v. Bivert*, 214 Mo. 473, 479-480, 113 S. W. 1118, 1120-1121 (1908):

> "* * * Truth does not always stalk boldly forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind's eye of the judge who tries the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or the lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. The brazen witness in reciting a lesson, or the itching overeagerness of the swift witness as well as honest face of the truthful one, are alone seen by him. In short, one witness may give testimony that reads in print, here, as if falling from the lips of an angel of light, and yet not a soul who heard it, nisi, believed a word of it; and another witness may testify so that it reads brokenly and obscurely in print, and yet there was that about the witness that carried conviction of truth to every soul who heard him testify* * *"

Supporting authority for the *Creamer* decision is overwhelming. See *Combs v. Combs*, 284 S. W. 2d 423, 426 (Mo. Sup. 1955): "The jury may believe or disbelieve the testimony of witnesses although the testimony be uncontradicted;" *Marcella v. Commissioner*, 222 F. 2d 878, 883 (C. A. 8, 1955): "The trial court is not compelled to believe evidence which to it seems improbable, or to accept as true uncorroborated evidence of interested witnesses, even though uncontradicted;" and *Daniels v. Souders*, 195 F. 2d 780, 781, 90 App. D. C. 298 (1952), apparently overlooked by the Court of Appeals here: "The credibility of testimony is within the province of the trial court who saw

the witnesses and heard them speak." See also 43 *Am. Bar Journal* 797, 799, in which the author, a member of the staff of the Judge Advocate General of the Air Force, referred to the revised Uniform Code of Military Justice, which authorizes a board of review to weigh the evidence and judge credibility, as "a power unique in appellate procedure." Moreover, that unique power to judge credibility was authorized in the military code as a means to protect the accused, not as a way to hang him as in the instant case.

As the Court of Appeals has left the matter, petitioner would be in good standing in respondent Union, if he had lived in California where he could have brought suit against respondents, as Gonzales did. Or contrary wise, if Gonzales had lived in Missouri and forced to sue in the District of Columbia, he would now be out of the Union and out of a job, on the precedent of the Court of Appeals. While state courts on occasion do reach opposite results, there ought not to be a federal precedent to add to the confusion. Only this Court can settle the anomalous situation of inter union rights resting upon the accident of geography.

5. An additional reason for granting the writ, is that the decision in the instant case appears to be contrary to that of the same court in *Teamsters v. Cunningham*, 41 LRRM 2044, Nov. 4, 1957, not reported elsewhere. There the Court of Appeals upheld an order of the District Court enjoining international officers of the Teamsters Union from expending certain monies, and from taking the offices to which they were elected. Certainly that decision injects the court into the internal affairs of a trade union far more than the relief sought by petitioner. The protection of union funds against misuse, and the protection of the union ballot box are important matters, clearly justifying the intervention of a

court of equity. However, it would seem that the damage to petitioner caused by his expulsion from the union, should also be a matter of concern to the courts, as it affects his job, his livelihood, his honor and his reputation.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

VICTOR B. HARRIS,
411 North Seventh Street,
St. Louis 1, Missouri,

SEYMOUR KRIEGER,
777 Fourteenth Street, N. W.,
Washington 5, D. C.,

Counsel for Petitioner.

APPENDIX A.

Opinion of Court of Appeals.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit.

No. 13819.

International Association of Machinists, et al.,
Appellants,

v.

Al Friedman, Appellee.

Appeal from the United States District Court
for the District of Columbia.

Decided February 20, 1958.

Mr. James L. Highsaw, Jr., with whom Mr. Edward J. Hickey, Jr., was on the brief, for appellants.

Mr. Victor B. Harris, with whom Mr. Seymour Krieger was on the brief, for appellee.

Before Fahy, Washington and Danaher, Circuit Judges.

Fahy, Circuit Judge: The problem is whether appellee, Friedman, was expelled from membership in the International Association of Machinists, a labor organization, in a manner which entitles him to judicial redress.[1] The District Court, holding that he had not been afforded minimal

[1] The case was here before on the question of jurisdiction of the District Court. *Friedman v. International Ass'n of Machinists*, 95 U. S. App. D. C. 128, 220 F. 2d 808, *cert. den.* 350 U. S. 824.

fairness in intra-Association appellate procedures, enjoined expulsion for the time being but retained jurisdiction for subsequent consideration of additional proceedings which might be accorded him by the Association.

Appellee was a member of Lodge No. 688 of the Association at St. Louis. He was formally charged by one Weber, member of another Lodge, with violation of Article XXV, Section 2, of the Grand Lodge Constitution of the Association, "specifically . . . with advocating, encouraging and supporting Communism and also with being a member of the Communist Party."[2] This constitutional provision reads as set forth in the margin.[3]

The Lodge President referred the matter to a Trial Committee[4] which, after a full hearing, found appellee not guilty "due to lack of sufficient and positive evidence." The Lodge affirmed by a membership vote of 95 to 26.[5]

Weber appealed to the International President, hereinafter referred to as the President, by sending to him a letter[6] in which he outlined the charges and his version

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[2] The full text of the charge is set forth in note 14, *infra*.

[3] Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the Grand Lodge, or the Constitution for Local Lodges, or any member who advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or who, by other actions gives support to these "philosophies" or "isms," shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion or both.

[4] In accordance with Article K, § 2 of the local lodge constitution.

[5] See Article K, § 6.

[6] Article K, § 9:

Appeals may be taken from the decision of any local lodge or Grand Lodge Office to the International President . . .

of the evidence. The President by letter informed the Lodge of the appeal and directed the record to be sent to him.[7] Appellee was present at the Lodge meeting when the President's letter was read. He was not furnished a copy of Weber's appeal letter, nor did he request a copy. He wrote the President that the constitution reserved the right of appeal to a member who had been convicted, and that Weber could not appeal appellee's acquittal by the Lodge.[8] He requested no hearing before the President and none was held. The President, in a rather full written review of the evidence, found that "the record establishes clearly that Defendant Friedman has advocated and encouraged Communism and given support to the spread of the Communist philosophy in the U. S. A." On the basis of the "verbatim transcript" he found that appellee "has supported a movement dual in purpose to the International Association of Machinists in violation of the Grand Lodge Constitution." Under his constitutional authority, and particularly Article XXV, Section 3,[9] the President ordered appellee's expulsion from the Association.

Appellee then appealed to the Executive Council of the Association. His request for an oral hearing there

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[7] The record consisted of the charges filed, transcript of the trial, report of the Trial Committee, and excerpts from the Lodge minutes dealing with action on the Trial Committee report.

[8] He added,

> I do not believe it necessary to detail the lack of merit in the original charges and to cite the abundant supporting evidence in our Constitution which clearly reserves the right of appeal to the defendant in a trial case. I request that you deny the plaintiff Weber's appeal forthwith, on the basis that it clearly violates the acquitted defendant's Constitutional rights.

[9] Article XXV, § 3:

> The International President and Executive Council shall have authority to expel any member guilty of joining, or participating in any dual organization.

was denied but he was given ample time to prepare and file a brief, through counsel, which he did. The Executive Council sustained the President. He now appealed to the Grand Lodge Convention,[10] where the matter was referred to the Appeals and Grievance Committee in accordance with established procedure. Appellee was granted an oral hearing before this Committee, but not otherwise before the Convention as he requested. He was informed that this also accorded with established policy. The Committee reported to the Convention that appellee was guilty of violating Article XXV, Section 2, of the constitution, and recommended his expulsion. The Convention adopted the report and recommendation, followed by appellee's resort to the courts.

On cross motions for summary judgment, heard on the pleadings, exhibits and affidavits of the parties, the District Court found that the evidence which was before the Association "could be the basis for a determination, after proper appellate procedure, that the plaintiff actively engaged in Communist activities, had been issued a card in the Communist Party, and had recruited members of the Communist Party from members of his local lodge." The court also ruled that an appeal to the President was available to Weber, but held, as we have said, that appellee had not been accorded fair appellate procedures.

We too find no basis for holding that the evidence was insufficient, and we also agree with the District Court that the constitution, note 6, *supra*, in providing that appeals may be taken to the President, employs words that are inclusive rather than exclusive, and "it cannot be assumed that the Association intended to leave the discipline of its members entirely in the hands of the members of the local lodge to which a member might be-

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[10] See Article XXV, § 6 of the Constitution.

long." This interpretation of the constitution, not inconsistent with its language, has been adopted by the Association's President, Executive Council, and Grand Lodge Convention, which measurably adds to its weight.[11]

We are unable to agree, however, that the procedures within the Association were not adequate. While membership in a labor organization is valuable and may not be legally taken away, see *Friedman v. International Ass'n of Machinists, supra*, the courts should not upset the Association's management of its affairs unless its decision is inconsistent with fundamental fairness, or was reached in violation of the organization's own rules, or otherwise constitutes "illegal action." See, for example, *Green v. Obergfell*, 73 App. D. C. 298, 307, 121 F. 2d 46, 55; *Davis v. International Alliance*, 60 Cal. App. 2d 713, 141 P. 2d 486; *Becker v. Calnan*, 313 Mass. 625, 48 N. E. 2d 668; *Rubens v. Weber*, 237 App. Div. 15, 260 N. Y. S. 701, 705 (1st Dep't); *Margolis v. Burke*, 53 N. Y. S. 2d 157, 161 (Sup. Ct.); *Simpson v. Grand Int'l*, 83 W. Va. 355, 98 S. E. 580, 587.

Appellee did not have a copy of Weber's letter to the President until the case came to court; but this was not such a procedural defect as invalidated the intra-Association proceedings. Appellee rested his case before the President solely upon the legal proposition that no appeal was available to Weber.[12] He knew that Weber had sent in an appeal but he made no effort to learn its content. No rule or regulation covered the matter, and there was no deliberate withholding of information. The decision of

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[11] *Harris v. Missouri Pac. R.*, 1 F. Supp. 946 (E. D. Ill.); *Burke v. Monumental Div., Locomotive Engineers*, 273 Fed. 707, 712 (D. Md.). And see *Communications Workers, CIO, v. NLRB*, 215 F. 2d 835, 838 (2d Cir.).

[12] Appellee concluded his letter to the President as set forth in note 8, *supra*.

the President contains an independent analysis of the transcript, recites that the President had received "a copy of the charges filed by Brother Weber, together with a copy of the transcript of the hearing before the Trial Committee and other information dealing with the case . . . together with his appeal. . . ." and states that the President had reviewed "all the testimony and other evidence submitted in this case." Appellee made no further move at the presidential level notwithstanding these recitals. Moreover, appellee subjected the President's decision to attack before the Executive Committee and the Appeals and Grievance Committee of the Grand Lodge Convention, with full knowledge of its content.

Appellee also contends that the President could not impose a penalty not prescribed by the Lodge. The point seems to be that Article K, Section 7 of the Constitution for Local Lodges requires a two-thirds vote for expulsion.[13] The point further seems to be bound up with the fact that the charges filed by Weber[14] alleged violations of Article XXV, Section 2, of the Grand Lodge Constitution, while the decision of the President referred "particularly" to Section 3 of that Article, note 9, supra. The solution is that Article XXV, Section 3, gives the President himself authority to expel, independently of Article

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[13] Sec. 7. The recommendation of the committee may be amended, rejected, or another punishment substituted therefor, by a majority vote of those voting on the question, excepting that it shall require a two third (2/3) vote of those voting to expel the defendant from membership.

[14] I, Lloyd Weber, Card No. 464197, member of Lodge 787, District No. 9, hereby prefer charges against Brother Al Friedman, Card No. H-93065, member of Lodge 688, for violation of Article XXV, Section 2, of the Constitution of the Grand Lodge of the I. A. of M.

Specifically, I charge this Brother with advocating, encouraging and supporting Communism and also with being a member of the Communist Party.

K, Section 7, if the offense is "joining, or participating in any dual organization." The legislative history of Article XXV, Sections 2 and 3, discussed infra, shows that the Communist movement is such a dual organization within the meaning of these provisions.

The President utilized his own expulsion authority after finding that appellee had engaged in activities directed "toward the advancement of the Communist philosophy in the United States" and had "supported a movement dual in purpose to the International Association of Machinists." His decision must fairly be read also as including a finding that appellee had assisted or encouraged the Communist Movement.[15] In setting aside the decision of the Lodge, "based upon the record in the case," he found appellee "guilty and hereby expel him from membership in our Association." Thus, the President found appellee guilty of the charges, ruled that this constituted participation in a dual organization, and exercised the authority he possessed in such circumstances under Section 3. We find no reason for judicial repudiation of this procedure. It seems a fair and permissible means available to the Association for reaching the conclusion that appellee had encouraged and supported Communism, was a member of the Party, and, accordingly, could be expelled for dualism.

Appellee says that the evidence is insufficient to sustain the charges in that it failed to establish that appellee was engaged in Communist activity after April 1, 1949, the effective date of the constitutional provision he

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[15] The decision states *inter alia*:

> While it is agreed that the defendant has a right to think as he chooses, the Grand Lodge Constitution governing our organization makes it obligatory to deny membership in our Association to anyone who assists or encourages the Communist Movement.

was charged with violating. We agree with the District Court in rejecting this contention. The provision adopted April 1, 1949,[16] was declaratory of pre-existing Association law governing membership. As far back as 1925 the Executive Council, then known as the Executive Board, issued official circular No. 183 to the officers and members of all Local Lodges reciting the decision of the Board that the Communist Party had the ultimate purpose of destroying the trade union movement of America and that its secret activities constituted a dual organization to the International Association of Machinists "within the meaning of the terms as set forth in the Constitution, Article XXII," referring to the Association Constitution as it then read. This circular also stated that the Board had adopted a motion that the Communist Party, among other organizations, is antagonistic in character and dual in nature to the Association, and all members were notified that on or after October 15, 1925, no member of the Association could hold membership in or affiliation with any such dual organization. The circular said this action was required by the 1924 Convention of the Grand Lodge. Again, under date of February 6, 1947, the Executive Council issued a declaration of policy to all officers and members of all Local Lodges, referring to the circular of August 15, 1925, quoting from it with respect to dual organizations and membership, stating that Communism and other totalitarian ideologies now imposed an even greater threat, and advising that the Executive Council had unanimously resolved that any individual who encourages Communism or other totalitarian philosophies, or supports them, "is not eligible to membership in the I. A. of M."; and that any member of the Association who encourages Communism or other totalitarian philosophies or supports them, is subject to

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[16] The charges were filed March 14, 1952

the charge of "improper conduct" and trial under "Article K-Code" and if guilty shall be expelled. The declaration concluded, "it is expected that every local and district lodge, as well as the entire membership will take due notice of the announced policy and be governed accordingly." In a revision of the Association Constitution effective April 1, 1949, the present Article XXV, Section 2, was added.

For us to hold in the above circumstances that the evidence against appellee must associate him with a dual organization subsequent to April 1, 1949, we think would do violence to the Association's right to control its membership in a respect within its competence. The constitution as revised April 1, 1949, embodied a continuation of existing policy in the respects here pertinent and did not wipe the slate clean to be effective in those respects only *in futuro*. One who desires the advantages of membership ought to be held to the obligation of abiding the organization's rules against communistic dualism.

Considering the foregoing, and other questions raised, in the light of the relationship of judicial review to control by a labor organization of its membership, we think appellee's expulsion should not be restrained. The judgment of the District Court accordingly is reversed, and the case remanded for grant of the motion of the Association for summary judgment.

It is so ordered.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit.

January Term, 1958.

International Association of Machinists et al.,
Appellants,
vs.
Al Friedman,
Appellee.
No. 13,819.

United States Court of Appeals for the District of Columbia Circuit.

Filed Feb. 20, 1958, Joseph W. Stewart.

Appeal from the United States District Court for the District of Columbia.

Before: Fahy, Washington and Danaher, Circuit Judges.

Judgment.

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment - - - of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to grant the motion of the International Association of Machinists for summary judgment.

It is further Ordered by the Court that appellants herein recover from appellee their taxable costs on this appeal and have execution therefor.

Per Circuit Judge Fahy.

Dated: February 20, 1958.

In the
UNITED STATES DISTRICT COURT
For the District of Columbia.

Al Friedman,

Plaintiff,

v.

International Association of Machinists, A. J. Hayes, Individually and as International President of the International Association of Machinists and Member of its Executive Council, Eric Peterson, Individually and as General Secretary-Treasurer of the International Association of Machinists and Member of its Executive Council, and Elmer E. Walker, Individually and as General Vice-President of the Executive Council of the International Association of Machinists and Member of its Executive Council,

Defendants.

Civil Action No. 4528-52.

Memorandum.

Morris, J. Plaintiff brings this suit seeking injunctive relief from his expulsion as a member of the Tool and Diemakers Lodge No. 688 of defendant International Association of Machinists. On March 14, 1952, charges were filed against plaintiff by the business agent for his district of the Association, pursuant to Section 1, Article K, of the Constitution of the Association, charging plaintiff "with advocating, encouraging and supporting Communism, and also with being a member of the Communist Party." In accordance with the Constitution of the Association, a trial committee was appointed by the president of plaintiff's lodge, before whom trial was had on March 24, 1952. The

trial committee, on March 28, 1952, submitted its report to the membership at a regular meeting of the lodge as follows:

> We, the members of the trial committee of the case of Lloyd Weber versus Al Friedman have after long and serious deliberation and much discussion of the evidence presented find the defendant not guilty as charged due to lack of sufficient and positive evidence.

The members of the lodge at such meeting voted 95 to 26 to sustain the "not guilty" verdict. The complainant took an appeal from this action to the President of the International Association, who set aside the decision of the Lodge, found the plaintiff guilty, and expelled him from membership in the Association. Appeal from the action of the International President was taken by the plaintiff to the Executive Council of the Association, and from its affirmance to the Grand Lodge Convention, which also affirmed the finding of guilty and plaintiff's expulsion.

It is the plaintiff's contention that no right of appeal from a verdict of "not guilty" is permitted under the Constitution of the Association; that, if thereby permitted, such procedure violates "fundamental principles of democratic procedure," and that the appellate proceedings were illegal because he was not permitted to be present, or have proper representation, at such proceedings.

Courts have generally upheld appeals from "not guilty" verdicts of members of voluntary associations when the constitution of the association explicitly provides therefor, **Simpson v. Grand International Brotherhood of Locomotive Engineers**, 83 W. Va. 355, 98 S. E. 5960, cert. den. 250 U. S. 644; **Callahan v. Order of Ry. Conductors**, 169 Wis. 43, 171 N. W. 653; **Reubens v. Weber**, 237 App. Div. 15, 260 N. Y. S. 701; **Pfoh v. Whitney**, 62 N. E. (2d) 744. It is said that the members consent to, and are bound by, regulations and laws of the association when they become one of its mem-

bers, and that, if such regulations are reasonable, courts, in reviewing proceedings to discipline a member, will inquire only to see whether such proceedings have been in accordance with the constitution and by-laws of the association, whether the charges are substantial, whether the member has had fair notice and opportunity to be heard, and whether malice has been employed in arriving at the decision.

Section 9, Article K, of the Constitution of this Association provides:

> Appeals may be taken from the decision of any local lodge or Grand Lodge Officer to the International President, * * *. Thereafter appeals may be prosecuted in accordance with provisions of Section 6,[1] Article XXV of the Grand Lodge Constitution.

The plaintiff contends that, because no words explicitly granting to the complainant a right of appeal, no such appeal is allowable. I do not agree with this contention. The words employed are inclusive rather than exclusive, and without the latter it cannot be assumed that the Association intended to leave the discipline of its members entirely in the hands of the members of the local lodge to which a member might belong. This is particularly so when

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[1] Sec. 6. Appeals may be taken from the decision of the International President to the Executive Council. Appeals may be taken from the decision of the Executive Council to a convention of the Grand Lodge, or to the membership at large by submission thereof through the referendum. All appeals shall be laid before the body to whom addressed through the General Secretary-Treasurer. Before any appeals can be taken from any decision of the Executive Council, the decision, and all orders of the Executive Council in relation thereto, must be fully complied with by all parties concerned therein in order to entitle them to enter an appeal, and in no case shall any district or local lodge, or any individual member or members thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution. No member of the Executive Council shall have a vote on any appeal on which he has already rendered a decision.

the ultimate decision is lodged in the Grand Lodge in convention, or in the membership at large through referendum. However, where an appeal is taken from a determination that the accused is not guilty, before a judgment may be reached that he is guilty, it is manifestly clear that full opportunity must be given at every stage in such appellate procedure for the accused to be heard and to reply to matters, both of law and fact, urged against him. The practice employed here is unlike the conventional appellate proceedings where the determination of the appellate tribunal normally affirms the judgment or reverses for error and remands the case for a new trial where the defendant has full opportunity to present his defense.

There was evidence at the trial which could be the basis for a determination, after proper appellate procedure, that the plaintiff actively engaged in Communist activities, had been issued a card in the Communist Party, and had recruited members of the Communist Party from members of his local lodge. The plaintiff contends now, as was his principal contention at the trial, that there was no such evidence with respect to any action subsequent to the adoption on April 1, 1949, of Section 2, Article XXV, of the Constitution, under which plaintiff was charged. It was clearly a matter for proper appellate consideration as to whether or not the plaintiff is chargeable with knowledge of decisions of the Association prior to his membership therein holding Communist activity to be violative of its laws covering "dual unionism" and "improper conduct," and of motion[2] adopted by the Executive Council,

[2] That the Trade Union Educational League, the Workers or Communist Party, the Young Peoples' League, or Young Workers' League are antagonistic in character and dual in nature to the International Association of Machinists.

That all members of the International Association of Machinists who are also members of any of the said dual organizations be given a 60-day notice within which they shall sever all connections with the said dual organizations, or relinquish their membership in the International Association of Machinists.

circularized in Official Circular No. 183, under date of August 15, 1925, and of motion[3] adopted by the Executive Counsel on January 13, 1947, circularized in Official Circular No. 474, under date of February 6, 1947.[4]

The following allegation of the complaint gives rise to much concern:

> The procedure at the said Grand Lodge Convention was controlled completely by defendants. Plaintiff's request to appear before said Convention was refused; and said Convention was misinformed by the defendants and their agents as to the facts involved and as to plaintiff's position thereon.

In his memorandum of points and authorities in support of his motion for summary judgment, plaintiff seems to have converted this charge into two other charges, namely, that the appeal to the International President was taken without notice to him and without giving him an opportunity to be heard, and that the Appeals and Grievance Committee of the Convention, appointed by the International President, and completely controlled by him and

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[3] That any individual who advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or who, by other actions, gives support to these "philosophies" or "isms" is not eligible to membership in the I. A. of M.

That any member of the International Association of Machinists who advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or who, by other actions, gives support to these "philosophies" or "isms" is subject to the charge of "improper conduct" and trial under "Article K—Code"—and if guilty shall be expelled.

[4] Article I, Section 4, and Article IV, Section 2, of the Constitution, provide that between conventions all executive and judicial power of the Association is vested in the Executive Council, and that sessions thereof "shall have the same authority to initiate legislation as has a delegate convention." The section under which plaintiff was charged, therefore, served to make activity which "advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or * * * gives support to these 'philosophies' or 'isms'" a separate offense.

the other defendants, merely listened to plaintiff in silence, asked him if he had anything more to say and directed his removal from the hearing room, and thereafter heard one of the witnesses who had testified against plaintiff before the trial committee and a member of the Executive Council.

Exhibits attached to defendants' motion for summary judgment show that the complainant at the original trial wrote the International President a letter, in which he filed an appeal and summarized evidence at the trial of plaintiff's guilt, and enclosed copy of the verbatim transcript of the trial. The International President then addressed a letter jointly to the president and the recording secretary of the local lodge, advising that an appeal had been taken, and directing that he be furnished with certain papers respecting the trial. In his letter transmitting the requested papers, the recording secretary stated:

> Your letter will be read at the next meeting of the Lodge so that the membership present will know that an appeal has been made to the International President, in regard to the decision of Lodge No. 688, in the subject case of Weber vs. Friedman.

Seven days after the date of the recording secretary's letter, plaintiff wrote the International President as follows:

> I am writing concerning the appeal by plaintiff Lloyd Weber, in the case of Weber vs. Al Friedman (H93065) which was voted on by Lodge 688, District No. 9, at its regular meeting of March 28, 1952.
>
> Your communication announcing the appeal and requesting the official results was read to Lodge 688 on April 25, at its regular meeting.
>
> Nowhere does our Constitution give the right to appeal to a plaintiff in a trial. Certainly Article K, Section 9, under which Weber seeks to appeal is clearly and unequivocally reserved to a defendant who may have been found guilty by his local Lodge.

> I do not believe it necessary to detail the lack of merit in the original charges and to cite the abundant supporting evidence in our Constitution which clearly reserves the right of appeal to the defendant in a trial case. I request that you deny the plaintiff Weber's appeal forthwith, on the basis that it clearly violates the acquitted defendant's Constitutional rights.

In a lengthy letter of May 5, 1952, to the president and recording secretary of the local lodge, the International President made findings "based upon the record" in the case and conclusions, setting forth considerable of the evidence of guilt and the established law and policy of the Association, and decided:

> Careful examination of all the testimony presented at the trial reveals that certain activities of the Defendant have been directed toward the advancement of Communist philosophy in the United States. • • •
>
> I am therefore setting aside the decision of the Lodge in this matter and, based upon the record in the case, I find the Defendant guilty and hereby expel him from membership in our Association. The expulsion of Defendant • • • shall be effective as of this date. • • •

There is no question that the plaintiff has had actual knowledge that an appeal had been taken to the International President, or that he submitted certain matters contesting the appeal, but it is equally clear that he was not given an opportunity to hear and be heard with respect to the matters which induced the International President to reverse the action of the lodge finding him not guilty.

Both plaintiff and his counsel requested permission to be present when his appeal was taken up by the Executive Counsel, and in a letter from defendant Peterson, General Secretary-Treasurer, plaintiff was advised:

> Your inquiry as to whether or not it is permissible for you to appear before the Executive Council in person, can be answered by pointing out that this is a matter on which the Executive Council, itself, has to rule. It may be helpful to point out that very seldom does the Executive Council grant that type of request, inasmuch as it is considered that a member appealing a decision from the International President has ample opportunity of presenting in written form, all of his reasons why the decision should be set aside.

and plaintiff's counsel was advised by the same person:

> As I have previously informed Brother Al Friedman —as a matter of policy—the Executive Council of the International Association of Machinists, A. F. L., does not hear oral argument concerning the merits of an appeal to them from a decision of the International President.

Later plaintiff was advised, in a letter from defendant Peterson:

> In reply to your letter of May 19, addressed to the Executive Council, wherein you request an opportunity to appear before the Council in person, together with counsel of your choice, in order to argue your appeal from the decision of the International President in the case of Weber v. Friedman, Lodge No. 688, dated May 5, 1952, you are now advised that your request was placed before the Council and after due consideration they voted not to grant your request.

Plaintiff's counsel did file a somewhat lengthy brief, in which the stages of the trial were set forth, and argument made respecting the legal positions urged by plaintiff and the lack of evidence to support the findings of the International President. Here again, it being evident that the hearing before the Executive Council was in effect a continuation of the trial itself, it required that the plaintiff

be given an opportunity to hear and to be heard on the matters being considered.

Excerpts from the proceedings of the Grand Lodge Convention are filed as an exhibit to defendants' motion for summary judgment, and contain the report of the Appeals and Grievance Committee:

> The files contained a request by the appellant to appear before your Committee in his own behalf. * * *
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> * * * * * * *
>
> The appellant did appear before your Committee. At his appearance the accused Friedman relied almost entirely on the point that the plaintiff had no right to appeal the acquittal by the Local Lodge. We find no merit in this contention in view of the provisions of Article K, Section 9, of the Constitution which provide for appeal from the decision of any local lodge. The Section does not limit appeal only from verdicts of guilty. Also appeared before this Committee Brothers Fred Spechman, William King, Henry Eves and John Graff of Lodge No. 688 and Brother Russell Davis, District No. 9, Brother Russell Johnson, Lodge No. 1402, and Brother James Richardson, Lodge No. 1947, as well as General Vice President P. L. Siemiller in behalf of the Executive Council.
>
> Conclusion.
>
> A review of all the evidence before us: the transcript; the Decision of May 5, 1952, of the International President; and the subsequent action of the Executive Council, compels the conclusion that there is ample and sufficient evidence on the record as a whole to support the finding of a violation of Article XXV, Section 2, and warrant the verdict of Guilty and penalty of expulsion. We find and conclude that Al Friedman, at all times material herein, was a mem-

ber of the Communist Party; that he advocated Communism; that he encouraged Communism; and that he gave support to Communism. As a result we conclude he merits the penalty of expulsion, and we recommend that the delegates in Convention assembled so find and conclude. To the extent, however, that the findings and conclusions of both the International President and the Executive Council may be inconsistent or in conflict with our findings, conclusions and recommendations, they are so modified.

The conclusion reached is that the plaintiff has not been accorded the procedures on appellate review which are the minimal requirements of fairness necessary to the reversal without further trial of a determination of not guilty, particularly where, as here, the livelihood of the accused is so directly involved with his right to membership in the union. In this view, injunctive relief will be granted to the plaintiff against his expulsion, unless and until he has been accorded the benefit of appellate proceedings in which at each stage he is given full opportunity to hear and to be heard, both as to law and the facts upon which it is sought to make a finding of guilty. The order of this Court shall be without prejudice to the defendants to prosecute such appellate proceedings, and to take appropriate action pursuant thereto.

Counsel will prepare an appropriate order to carry this decision into effect.

/s/ Jas. W. Morris,
Judge.

January 7, 1957.